MUKA BIN MUSA v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Wylie C.J. (Borneo)) November 6, 1963]

[Jesselton — Federal Court Criminal Appeal No. 8 of 1963]

Evidence — Confession — Double interpretation — Possibility of doubt.

Penal Code, s. 396 — Gang robbery with murder by pirates — Retracted confession — Double interpretation.

In this case the appellant was convicted of gang robbery with murder contrary to section 396 of the Penal Code. The only evidence connecting the appellant with the offences was a confession he made before a magistrate. This confession was in a sense retracted at the trial in that the appellant set up a defence of duress. The confession was recorded by a process of double interpretation, the appellant speaking in his own language which was interpreted into Malay and from Malay into English. On appeal it was urged that there was a possibility of misinterpretation which was so substantial as to introduce an element of doubt.

Held: in the absence at the trial of any evidence to cast doubt upon the correctness of the appellant's statement it could not be said that there was any possibility of such substantial misinterpretation as to destroy the force of the confession.

FEDERAL COURT.

Shelly Yap for the appellant.

W. A. Raby (Deputy Public Prosecutor) for the respondent.

Thomson L.P. (delivering oral judgment): The appellant was convicted in the High Court at Tawau for the offence of gang robbery with murder contrary to section 396 of the Penal Code which states:—

"If any one of five or more persons, who are conjointly committing gang-robbery, commits murder in so committing gang-robbery, every one of those persons shall be liable to death with or without a fine."

The appellant is now appealing against his conviction.

The facts of the case are straightforward. On the 9th April, 1962, five persons who, without causing unnecessary offence to anybody's feelings, can be correctly described as pirates came by boat to a small village on Pulau Omadal. They were all armed. One of the party remained in the boat while the others entered the village, shot dead the Chinese shopkeeper and a Bajau man who worked in the shop, removed some goods and left in their boat.

On the night of the 11th February, 1963, a British warship came upon a boat on the high seas. One of the persons in this boat was the appellant who was taken into custody.

Subsequently he made a statement before a magistrate the admissibility of which was not contested at the trial. That confession was the only evidence which connected the appellant with the offences described. It was in a sense retracted at the trial in that the appellant set up a defence of duress, and in the circumstances it attracted very careful scrutiny. We ourselves have scrutinised it with care, particularly in view of the fact that it was recorded by a process of double interpretation, the appellant speaking in his own language which was interpreted into Malay and from Malay into English.

It has been urged upon us, although there is no evidence to that effect, that there was a possibility of misinterpretation and that this possibility is so substantial as to introduce an element of doubt.

In his statement the appellant said:—

"I followed with Abdul Hallim, Lujani and Sahibin and Sawara to pirate Kg. Omadal, Semporna District, in March 1962. We came to the kampong at about 3 p.m. We ate first then we raided the kampong. Lujani and Abdul Hallim went into the shop. Abdul Hallim told us he had shot a Chinese dead. I heard the sound of the shot as I was waiting in the boat, guarding the boat. Sawara shot the Bajau. Sahibin and Sawara were waiting outside the shop while the other two were raiding the shop. Altogether I heard two shots fired. One killed the Chinese, one the Bajau. We brought 5 weapons altogether. One Garrand, 'Musil' described as like a rifle American make. .22 rifle carbine. There were over 100 rounds of ammunition. We brought the weapon to aid us in our raid of the village. After the shots my friends brought out clothing from the shop and put it in the boat. We loaded up the boat and sailed back to the Philippines. ...."

In the absence at the trial of any evidence to cast doubt upon the correctness of the appellant's statement as quoted, we regret that we are unable to say that we can see any possibility of such substantial misinterpretation as to destroy the force of the confession.

In the circumstances the appeal is dismissed.

Appeal dismissed.

BISHAN SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim J.) February 28, 1964]

[Raub — Criminal Appeal No. 3 of 1964]

Road Traffic — Driving licence — Production of, for police examination — Whether driver arrested or detained — Road Traffic Ordinance, 1958, ss. 36(1), 48(1) and 56.

Road Traffic — Traffic signs — Police road barrier — Whether motorist under obligation to stop — Traffic Signs (Size, Colour and Type) Rules, 1959, r. 3 and Schedule.

Failure to comply with the provisions of section 56* of the Road Traffic Ordinance is fatal to a prosecution under section 36(1) of the Ordinance.

* 56. Where a person is prosecuted for an offence under section 35 or section 36 or any of the provisions of this Part of this Ordinance relating to the maximum speed at which motor vehicles may be driven, he shall not be convicted unless within fourteen days of the commission of the offence — (a) a summons for the offence was served on him; or (b) a notice in writing of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence: